



[7590-01-P]

## **NUCLEAR REGULATORY COMMISSION**

**[NRC-2013-0282; IA-13-038]**

### **In the Matter of Joseph S. Shepherd; Order Conditioning Involvement in NRC-licensed Activities**

I

Joseph S. Shepherd is the President and Owner of Foss Therapy Services, Incorporated (FTS) in North Hollywood, California. FTS does not possess a license issued by the Nuclear Regulatory Commission pursuant to 10 CFR Part 30. However, FTS is the holder of a State of California materials license, which authorizes the use of radioactive material for the maintenance, repair, and installation of self-shielded irradiators. The holder of a State license may perform work authorized by the license in other state or federal jurisdictions provided the State licensee files for reciprocity with the appropriate regulatory authority.

On September 8, 2008, the NRC issued Mr. Shepherd an Order, "Order Prohibiting Involvement in 10 CFR Part 71 Activities and Conditioning Other NRC Licensed Activities" (IA-08-014). The NRC issued the Order to Mr. Shepherd after he committed multiple violations of 10 CFR 110.7b, "Deliberate Misconduct." These violations arose out of Mr. Shepherd's employment by Source Production and Equipment Company, Inc. (SPEC), of St. Rose, Louisiana. SPEC, an NRC licensee, hired Mr. Shepherd to perform certain maintenance inspections required by the NRC Certificate of Compliance for Model No. 5979 shipping casks prior to shipping NRC-licensed radioactive material to Mexico. The NRC determined

through inspection and an investigation that, on three separate occasions, Mr. Shepherd deliberately provided materially inaccurate information to SPEC concerning the inspection of Model No. 5979 packages. Mr. Shepherd provided the inaccurate information in various documents, such as checklists and bills of lading. By deliberately providing materially inaccurate information, Mr. Shepherd caused SPEC to violate 10 CFR 71.3, "Requirement for License" and 10 CFR 71.17m "General License; NRC-approved package." For that reason, Mr. Shepherd's actions violated 10 CFR 110.7b, "Deliberate Misconduct."

The September 8, 2008, NRC Order, in part, prohibited Mr. Shepherd indefinitely from packaging any Type B shipments and from preparing any paperwork for a Type B shipment in any area of NRC jurisdiction. The Order required Mr. Shepherd to notify the NRC in writing at least 5 business days before conducting licensed activities in NRC jurisdiction, a condition designed to facilitate NRC inspection of Mr. Shepherd's activities. The Order also required that, prior to conducting licensed activities in NRC jurisdiction, Mr. Shepherd notify the customer, that the NRC had issued the Order to him and make the Order available to the customer. These notifications were required for a period of 5 years from the date of the September 8, 2008, Order; that is, until September 8, 2013.

## II

In early 2012, the Uniformed Services University of the Health Sciences (USU) in Bethesda, Maryland hired FTS to remove a Mark I Model 68A irradiator from a facility in North Carolina and install the irradiator at USU. Although USU is affiliated with the United States military services, it is under NRC jurisdiction. FTS's contract with USU originally involved a

joint venture with another company, but FTS became the sole contractor after the other company was unable to fulfill the contract. On April 4, 2012, FTS submitted to the NRC's Region IV an NRC Form 241, "Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters." With this form, FTS provided notification of their intent to conduct work at USU under reciprocity; that is, under FTS's California license.

On April 13, 2012, the NRC inspected FTS's work on the self-shielded irradiator at USU. After observing the activities of the day and watching FTS finish loading radioactive sources into USU's irradiator, an NRC inspector interviewed Mr. Shepherd regarding the notification provisions of the 2008 Order issued to him. Mr. Shepherd acknowledged that he had not notified USU of the Order and that he had not made the Order available to USU.

On April 25, 2012, the NRC Office of Investigations (OI) initiated an investigation to determine if Mr. Shepherd willfully failed to adhere to the conditions of his Order when he worked at USU without notifying the USU of the Order issued to him and without making the Order available to USU. Based on OI's investigation, the NRC finds that Mr. Shepherd willfully violated the Order, in careless disregard of its requirements. Specifically, the NRC finds that Mr. Shepherd willfully failed to notify USU of the Order issued to him and willfully failed to make the Order available to USU prior to performing work at the facility. Although Mr. Shepherd has stated that he believed the Order's notification requirements did not apply to his work at USU because USU was under military jurisdiction, rather than NRC jurisdiction, Mr. Shepherd knew that belief may have been incorrect, yet failed to verify USU's jurisdictional status. For example, Mr. Shepherd acknowledged that prior to working at USU he reviewed USU's NRC

license, a document that states “U.S. Nuclear Regulatory Commission Materials License” at the top of the first page. Mr. Shepherd also submitted a Form 241 to the NRC, an action that would not have been required had USU not been under NRC jurisdiction.

In a letter dated August 15, 2013, the NRC informed Mr. Shepherd that the NRC was considering escalated enforcement action against him for an apparent violation of the NRC Order issued to him on September 8, 2008. In the letter, the NRC offered Mr. Shepherd the opportunity to attend a Predecisional Enforcement Conference (PEC) or request Alternative Dispute Resolution (ADR). At Mr. Shepherd’s request, a PEC was conducted on September 25, 2013.

During the PEC, Mr. Shepherd acknowledged the apparent violation and the failure to provide notification to USU prior to performing work as required by the Order, indicating that he made a mistake. Mr. Shepherd also acknowledged that he would not have otherwise notified USU if he had not discussed the required notification with the NRC inspector during the inspection because he thought USU was under military jurisdiction and not NRC jurisdiction.

Based on the results of the inspection, the OI investigation, and the information provided during the PEC, the NRC finds that Mr. Shepherd willfully, in careless disregard, violated the conditions of the 2008 NRC Order against him because, prior to conducting work at the facility, Mr. Shepherd failed to notify USU of the Order issued to him and failed to make the Order available to USU. In sum, the NRC finds that Mr. Shepherd’s actions constitute a violation of NRC requirements.

### III

The NRC must be able to rely on licensees, their contractors, and their employees to comply with NRC requirements. Mr. Shepherd is currently prohibited from involvement in 10 CFR Part 71 activities, as set forth in the Order issued to him on September 8, 2008. This requirement of the Order remains in effect. The 2008 Order also required Mr. Shepherd to notify the NRC in writing at least 5 business days before working in NRC jurisdiction, in order to facilitate NRC inspections of his activities. In addition, the 2008 Order required that, before performing work, Mr. Shepherd notify customers that the NRC had issued an Order to him and make the Order available to customers.

Based on Mr. Shepherd's violation of the September 8, 2008, NRC Order, I lack reasonable assurance that Mr. Shepherd can be relied upon, at this time, to comply with NRC requirements. Based on the current violation, and because the notification requirements from the prior Order expired on September 8, 2013, the public health, safety, and interest require that the NRC issue Mr. Shepherd this Order. This Order requires that, before working in NRC jurisdiction, Mr. Shepherd (1) notify the NRC of his planned work and confirm that he has verified the jurisdictional status of his customer; and (2) notify the customer that the NRC has issued the September 8, 2008, NRC Order, and this Order to him and make the Orders available to the customer. These requirements will remain in effect for 3 years from the effective date of this Order. This Order also requires that Mr. Shepherd must determine whether the customer is under NRC jurisdiction, document his determination and state the basis for his determination. This requirement will remain in effect for 3 years from the effective date of this Order. The documentation of this requirement shall be

maintained for a period of 4 years from the effective date of the Order.

#### IV

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Part 71, 10 CFR 110.7b, and 10 CFR 150.20, IT IS HEREBY ORDERED THAT, FROM THE EFFECTIVE DATE OF THIS ORDER:

1. For a period of 3 years, Mr. Shepherd shall notify the NRC in writing at least 5 business days before conducting licensed activities in NRC jurisdiction.  
Mr. Shepherd may provide this notification electronically either by email to: [R4\\_Reciprocity.Resource@nrc.gov](mailto:R4_Reciprocity.Resource@nrc.gov), or by faxing this notification to (817) 200-1188. Mr. Shepherd may also provide this notification by mail to Regional Administrator, U. S. Nuclear Regulatory Commission, ATTN: Division of Nuclear Material Safety, 1600 East Lamar Blvd, Arlington, TX 76011. If this notification is provided by mail, Mr. Shepherd must ensure this notification is received by the NRC at least 5 business days before conducting licensed activities. The notification shall provide the name, location, and phone number of the customer; and it shall describe the type of work to be performed.
2. For a period of 3 years, Mr. Shepherd shall take the following actions before working for any customer, or for any contractor of a customer, who manufactures, produces, transfers, receives, acquires, owns, possesses, or uses byproduct material. Mr. Shepherd shall: (a) determine whether the

customer or its job site is under NRC jurisdiction, (b) document his determination in writing, and (c) state in writing the basis for his determination. Mr. Shepherd shall maintain this documentation for a period of 4 years from the effective date of this Order, and he shall make the documentation available for NRC inspection.

3. For a period of 3 years, before conducting licensed activities in NRC jurisdiction, Mr. Shepherd shall notify each customer in writing that the NRC has issued the September 8, 2008, Order and this Order to him, and he shall make the Orders available to the customer. Mr. Shepherd shall maintain copies of these notifications for 4 years from the effective date of this Order, and he shall make the copies available for NRC inspection.
4. Mr. Shepherd is currently employed by Foss Therapy Services. Should Mr. Shepherd seek other employment involving NRC-regulated activities within 3 years from the effective date of this Order, before accepting employment he shall provide the employer a copy of both this Order and the September 8, 2008 Order.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Joseph S. Shepherd of good cause.

Issuance of this Order does not alter the provisions in the September 8, 2008, Order issued to Mr. Shepherd, including the provision indefinitely prohibiting Mr. Shepherd's involvement with shipments of Type B quantities of NRC-licensed material.

In accordance with 2.202, Joseph S. Shepherd must submit a written answer to this Order under oath or affirmation within 20 days of its issuance. The response shall admit or deny the charge made in the Order. Joseph S. Shepherd's failure to respond to this Order could result in additional enforcement action in accordance with the Commission's Enforcement Policy. Any person adversely affected by this Order may submit a written answer to this Order within 20 days of its issuance. In addition, Joseph S. Shepherd and any other person adversely affected by this Order may request a hearing on this Order within 30 days of its issuance. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-001, and include a statement of good cause for the extension.

The response to this Order and the Notice shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555-0001. Copies shall also be sent to: Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; the Assistant General Counsel for Materials Litigation and Enforcement at the same address; Regional Administrator, U.S. Nuclear Regulatory Commission, ATTN: Regional Administrator, Region I, 2100 Renaissance Blvd, King of Prussia, PA 19406. This response should be clearly marked as a "Reply to a Notice of Violation and Order; IA-13-038."

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the



submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at [hearing.docket@nrc.gov](mailto:hearing.docket@nrc.gov), or by telephone at 301-415-1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. System requirements for accessing the E-Submittal server are detailed in the NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located

on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail to [MSHD.Resource@nrc.gov](mailto:MSHD.Resource@nrc.gov), or by a toll-free call at 866-672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at <http://ehd1.nrc.gov/ehd/>, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission

of such information. However, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a person other than Joseph S. Shepherd requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by Joseph S. Shepherd or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in

Section IV above shall be final 30 days from the date this Order is issued without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

Dated at Rockville, Maryland, this 20 day of December 2013

For the Nuclear Regulatory Commission

Roy P. Zimmerman, Director

Office of Enforcement

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